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§ 401.440 Advance payment of charges.

Subject to the approval of the Director, a United States or Canadian Registered Pilot performing pilotage services in accordance with the rates and charges set forth in this subpart may require advance payment of such rates or charges or a suitable bond securing payment.

[29 FR 10467, July 28, 1964, as amended at 32 FR 14221, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.450 Pilot change points.

A Registered Pilot's assignment is completed when the vessel to which he is assigned completes its arrival at or, in the case of a through trip, passes any of the following places:

- (a) Snell Lock;
- (b) Cape Vincent;
- (c) Port Weller;
- (d) Lock No. 7, Welland Canal;
- (e) Detroit/Windsor, other than assignments originating or terminating at a point on the Detroit River;
- (f) Port Huron/Sarnia;
- (g) Detour;
- (h) Gros Cap;
- (i) Chicago with respect to assignments originating at Detour or Port Huron/Sarnia; and
- (j) Duluth/Superior and Fort William/Port Arthur with respect to assignments originating at Gros Cap.

[CGFR 68-57, 33 FR 6479, Apr. 27, 1968. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.451 Pilot rest periods.

(a) Except as provided in paragraph (b) of this section:

(1) Each Registered Pilot upon completing an assignment at a change point designated in § 401.450, and

(2) Each Registered Pilot upon completing a series of assignments totaling more than 10 hours with no more than 2 hours rest between assignments, shall not perform pilotage services for at least 10 hours.

(b) In the event of an emergency or other compelling circumstances a pilotage pool may assign a Registered Pilot for service before his 10-hour rest period required under paragraph (a) of

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this section is completed. Pilotage pools shall advise the Director of each assignment made under this paragraph.

[CGFR 68-57, 33 FR 6479, Apr. 27, 1968. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

Subpart E—Penalties; Operations Without Registered Pilots

§ 401.500 Penalties for violations.

Any person, including a pilot, master, owner, or agent, who violates any provision of this part shall be liable to the United States for a civil penalty as set forth in 46 U.S.C. 9308.

[CGD 88-111, 55 FR Apr. 25, 1990. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.510 Operation without Registered Pilots.

(a) A vessel may be navigated in the U.S. waters of the Great Lakes without a United States or Canadian Registered Pilot when the vessel or its cargo is in distress or jeopardy.

(b) A vessel may be navigated in the U.S. waters of the Great Lakes without a United States or Canadian Registered Pilot when the Director, with the concurrence of the Commander, 9th Coast Guard District, notifies the master that a United States or Canadian Registered Pilot is not available.

(1) Notification to the master that a pilot is not available will be made by the Director, either directly to the vessel or through the appropriate pilotage pool, orally or in writing as the circumstances admit, and shall not be deemed given until the notice is actually received by the vessel.

(2) The determination that a pilot is not available will be made on an individual basis and only when a vessel has given proper notice of its pilotage service requirements to the pilotage pool having dispatching jurisdiction at the time. The vessel has no obligation or responsibility with respect to such notification other than properly informing the pilotage pool of its pilotage requirements. However, the failure or delay by the pool in processing a pilotage service request, or refusal or delay

by the U.S. Coast Guard in notifying the vessel that a pilot is not available, does not constitute constructive notice that a pilot is not available, and the vessel is not relieved by such failure or delay from compliance with the Great Lakes Pilotage Act of 1960.

(3) Upon receipt of proper notice of a vessel's pilotage requirements, the pilotage pool shall then determine from the *tour de rôle* the availability of a pilot to render the service required. If no pilot is reasonably expected to be available for service within 6 hours of the time the pilotage services are required by the vessel, the pilotage pool shall promptly inform the Commandant through the U.S. Coast Guard communications system in the manner as may be prescribed from time to time by the Commandant. The Commandant shall be informed of:

- (i) Name and flag of the vessel;
- (ii) Route of vessel for which a pilot is not available;
- (iii) Time elapsing before a pilot is reasonably expected to become available;
- (iv) Whether vessel has an "other officer" on board;
- (v) Familiarity of master with route to be transited by the vessel;
- (vi) Draft of vessel; and
- (vii) Any circumstances of traffic or weather, or condition of the vessel or its cargo which would adversely affect the safety of the vessel in transiting without a pilot.

(4) When a pilot is expected to become available within 6 hours of the time pilot services are required, the vessel shall be informed that a pilot is available and the approximate time the pilot will report on duty. However, should any unusual circumstance or condition exist which may justify notification that a pilot is not available in less than 6 hours, the pilotage pool shall inform the Director as in paragraph (b)(3) of this section, along with the circumstances involved. Additionally, the vessel may contact the Director directly to request notification under paragraph (b)(1) of this section if a notice of pilot availability is not received from the appropriate pilotage pool within two hours of providing its pilotage requirements to the pool.

(5) Any vessel which requires the services of a pilot and is navigated without a pilot or proceeds prior to receipt of a message that a pilot is not available pursuant to paragraph (b)(1) of this section shall be reported as in violation of section 7 of the Great Lakes Pilotage Act of 1960 by the pilotage pool to the local Coast Guard unit having jurisdiction. If the message is received after the vessel proceeds, such message shall not be delivered without concurrence of the Coast Guard officer to whom the violation was reported.

(6) U.S. pilotage pools informing the Director that a pilot is not available for a vessel shall also obtain notice that a pilot is not available from the appropriate Canadian Supervisor of Pilots for those portions of the route which are in Canadian waters in the manner prescribed by them. The notice for Canadian District No. 1 waters shall be obtained from the Supervisor of Pilots, Department of Transport, Cornwall, Ontario, and the notice for Canadian District No. 2 waters shall be obtained from the Supervisor of Pilots, Department of Transport, Port Weller, Ontario. Authority to issue notice for Canadian waters of District No. 3 has been granted to the Director by the Department of Transport, Ottawa, and separate notice from Canada for this District is not required until such time as separate Canadian pilotage dispatch facilities may be established.

(7) Notice that a pilot is not available shall not be delivered to any vessel unless the message contains the concurrence of the Commander, 9th Coast Guard District, and notice for Canadian waters of Districts No. 1 and No. 2, if required, has been obtained from the appropriate Canadian authority.

(8) In the event of an emergency or any other compelling circumstance, the Director may issue, without the specific request for service as provided under paragraph (b)(2) of this section, individual or general notification that a pilot or pilots are not available. Pilotage pools shall advise the Director

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of any condition or circumstance coming to their attention which may warrant such a determination.

[32 FR 14221, Oct. 13, 1967, as amended by CGD 88-111, 55 FR 17582, Apr. 25, 1990; 55 FR 19145, May 8, 1990; 61 FR 5721, Feb. 14, 1996. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

Subpart F—Procedure Governing Revocation or Suspension of Registration and Refusal To Renew Registration

§ 401.600 Right to hearing.

(a) A United States Registered Pilot, on receipt of notice from the U.S. Coast Guard that he or she has violated any regulation made pursuant to the Act, which violation the Director determines is grounds for suspension or revocation of the pilot's Certificate of Registration, shall have fifteen (15) days from the receipt of such notice in which to notify the Director that he or she elects to exercise his or her right to a hearing as to the grounds for the proposed suspension or revocation. A pilot failing to notify the Director within the prescribed period is deemed to have waived his or her right to a hearing.

(b) A United States Registered Pilot whose application was timely filed, on receipt of notice that renewal of his or her Certificate of Registration has been denied pursuant to § 401.240(c), who fails to notify the Director within fifteen (15) days of the receipt of such notice that he or she desires a hearing, is deemed to have waived his or her right to a hearing.

[29 FR 11595, Aug. 13, 1964, as amended at 32 FR 14222, Oct. 13, 1967; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG-2002-13058, 67 FR 61279, Sept. 30, 2002]

§ 401.605 Notice.

(a) The Director, upon receipt of notice that a U.S. Registered Pilot elects to exercise his rights to a hearing, shall arrange for a hearing and notify

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the pilot of the time, date and place it is to be held.

[32 FR 14222, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.610 Hearing.

(a) The hearing shall be held at the time and place designated with due regard to the convenience and necessity of the parties.

(b) The hearing shall be held on the record before an Administrative Law Judge appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105). Hearings shall be conducted in accordance with sections 5, 7, and 8 of the Administrative Procedure Act, as amended (5 U.S.C. 554, 556, 557).

[32 FR 14222, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.615 Representation.

(a) The U.S. Registered Pilot, designated "respondent" in a suspension or revocation hearing or "applicant" in a refusal-to-renew-registration hearing, may be represented before the Administrative Law Judge by any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, Territory, Possession, or the District of Columbia, upon filing with the Administrative Law Judge a written declaration that he is currently qualified and is authorized to represent the particular party in whose behalf he acts.

(b) Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Administrative Law Judge, Director, Commandant, the Administrator, or other official of the U.S. Coast Guard, his personal appearance or signature shall constitute a representation that under the provisions of this subpart and applicable law he is authorized and qualified to represent the particular person in whose behalf he acts.

(c) When any Registered Pilot is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such a U.S. Registered Pilot shall be